STATE OF MICHIGAN

COURT OF APPEALS

CITY OF PLEASANT RIDGE, Plaintiff-Appellant,	UNPUBLISHED June 20, 2006
v	No. 259708 Oakland Circuit Court
PINETREE PROPERTIES, L.L.C., Defendant-Appellee.	LC No. 2002-043673-CZ

Before: Cooper, P.J., and Neff and Borrello, JJ.

PER CURIAM.

Plaintiff, the city of Pleasant Ridge, appeals as of right the trial court's order granting summary disposition to defendant in this zoning dispute. Plaintiff challenges the trial court's ruling that an office building owned by defendant in Pleasant Ridge may not be coupled with a companion parcel of real property in the city of Ferndale less than 300 feet away, to establish parking space requirements for the office building under plaintiff's zoning ordinance. We affirm.

I

Plaintiff filed this action in September 2002, after defendant failed to comply with a directive from plaintiff to cease using a portion of a Woodward Avenue office building owned by defendant in Pleasant Ridge because the building lacked sufficient parking spaces to comply with city zoning requirements.[1] Plaintiff alleged that the office building previously complied with zoning requirements on the basis of additional parking spaces down the street from the office building on a companion parcel of property defendant owned in the adjacent city of Ferndale; however, in the summer of 2002, part of the Ferndale property[2] was partially converted

[1] According to plaintiff, the office building was in violation of the zoning ordinance with respect to parking requirements because the building consisted of 6,675 square feet of space and had 9 parking spaces; however, 27 spaces were required to occupy the entire office space (although plaintiff concedes that these numbers are disputed). Defendant contends that the office building has 12 parking spaces.

[2] The Ferndale property is approximately 8,440 square feet in size and contains a metal open-air roof cover and a small building located at the rear.

to a retail garden business, thus resulting in inadequate parking for operation of the office building property in Pleasant Ridge.

It is undisputed that the use of the office building parcel, with respect to the physical structure and number of parking spaces, has remained unchanged since approximately 1963, when the building was constructed by a previous owner. However, ownership of the building has changed several times over the years, and during that time, the Pleasant Ridge zoning ordinance has been amended to change the parking space requirements. Defendant purchased the office building in November 1996.

Plaintiff did not dispute that the office building parcel originally conformed with the city zoning requirements for parking and that the building became nonconforming because zoning ordinance amendments increased the required number of parking spaces. Plaintiff contended that although the building may have been a *legal nonconforming use* at one time, the office building lost its nonconforming use status when a previous owner of the building began utilizing the nearby Ferndale property as additional parking, which met current zoning provisions.[3] In July 2002, plaintiff informed defendant that the Ferndale parking was necessary "to keep the [office] building conforming, and to enable [defendant] to rent the entire square footage of the building." Accordingly, defendant could not discontinue use of the Ferndale parcel as additional parking without providing substitute parking elsewhere sufficient to meet current Pleasant Ridge zoning requirements.[4]

The trial court disagreed with plaintiff's reasoning and concluded that there was no "linkage" between the office building and the Ferndale parcel such that plaintiff could require continued use of the Ferndale parcel for parking to satisfy plaintiff's zoning requirements. The trial court granted defendant's motion for summary disposition, ruling that the office building constituted a legal nonconforming use under zoning law.

II

This Court reviews a trial court's ruling on a motion for summary disposition de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). Where the parties rely on documentary evidence in support of their arguments, appellate courts proceed under the standards of review applicable to a motion made under MCR 2.116(C)(10). *Krass v Tri-County Security*, 233 Mich App 661, 665; 593 NW2d 578 (1999).

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[3] Plaintiff provides no definite date that this status changed. According to plaintiff's complaint, in approximately 1994, the previous owners purchased the Ferndale parcel and informed plaintiff that the parking lot on the parcel was to be used for additional parking for the office building. However, on appeal, plaintiff states only that at some point after 1986, the Ferndale parcel was used to provide the required off-street parking for the office building.

[4] Alternatively, plaintiff could change the use of the office building to correspond with the available parking spaces to conform with zoning requirements, which is essentially the result sought by plaintiff in directing defendant to discontinue use of a portion of the building.

A motion brought under MCR 2.116(C)(10) tests the factual support for a claim, *Dressel, supra* at 561, and should be granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law, *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). A court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence then filed in the action or submitted by the parties in the light most favorable to the nonmoving party. *Id.*.

When the burden of proof at trial would rest on the nonmoving party, the nonmovant may not rest upon mere allegations or denials in the pleadings, but must, by documentary evidence, set forth specific facts showing that there is a genuine issue for trial. *Id*. A genuine issue of material fact exists when the record, drawing all reasonable inferences in favor of the nonmoving party, leaves open an issue upon which reasonable minds could differ. *West v GMC*, 469 Mich 177, 183; 665 NW2d 468 (2003).

III

Plaintiff first argues that the trial court erred in refusing to rule whether property in one jurisdiction may be used to satisfy the zoning requirements of another jurisdiction. Plaintiff asserts that the trial court failed to properly apply the ordinances, affidavits, and case law presented. We disagree.

In 1996, Pleasant Ridge amended its zoning ordinance to require one parking space for every 250 square feet of business or professional office usable floor area. In 2001, Pleasant Ridge adopted a new zoning ordinance, "the PRZO," (Pleasant Ridge Zoning Ordinance), requiring one off-street parking space for every 250 square feet of usable floor area for business or professional offices.

The PRZO permits off-street parking to be provided on a nearby separate parcel. Section 26-13.3(3) provides: "Parking for vehicles in the amount specified in this section shall be provided on the same parcel as the principal use *or on a separate parcel* within 300 feet of the principal building, on the same side of Woodward Avenue, if zoned for the same uses as allowed on the property of the principal use."

Plaintiff contends that the PRZO permits the use of the Ferndale parcel to satisfy the parking requirements of the office building parcel and that no prohibition exists in this regard in the Ferndale zoning ordinance. Further, plaintiff provided other documentary evidence showing the parcel's use as parking for the office building. Plaintiff's former city manager averred that based on his inspection of the office building in 1991, it would have been nonconforming with the then-existing zoning ordinance absent the availability of the Ferndale parking. Plaintiff also provided the affidavit of its planning consultant stating that it is common to use property in another jurisdiction to satisfy zoning ordinance requirements. Plaintiff provided a 1991 letter from defendant's predecessor in title, Huntington Banks, that acknowledged use of the parcel as parking for the office building and provided written assurance that the two parcels would be sold together. Plaintiff cites a Pennsylvania case, *St Margaret Mem Hosp v Borough Council of Aspinwall*, 163 Pa Commw 595; 641 A2d 1270 (1994), which held that property in one jurisdiction may be used to satisfy parking for a hospital in another jurisdiction. Plaintiff contends that "linkage" of the parcels at issue in this case is permitted as a matter of law, that

plaintiff has proved linkage on the basis of various affidavits submitted, and plaintiff therefore is entitled to judgment as a matter of law.

Contrary to plaintiff's argument, the trial court did not fail to decide the key issue in this case. In the court's August 25, 2004, opinion and order clarifying its decision, the court noted that the issue was "whether property located in one jurisdiction may be used to satisfy the zoning requirements of another jurisdiction," and noted (1) that "[t]he City agrees that it cannot require any use of Ferndale property," and (2) that "there is no legal authority, which could support the linkage of the property." The trial court stated, "[m]erely because the City considered the two properties linked does not give it legal effect. Accordingly, the Court clarifies that there is no linkage between the two properties."

The trial court determined that the status of the office building parcel under the PZRO was not dependent on prior use of the Ferndale parcel for parking. The trial court's decision properly adjudicated the dispute before the court.

IV

Plaintiff next argues that the trial court erroneously concluded that plaintiff's office building was a legal nonconforming use. We disagree.

MCL 125.583a(1)[5] protects nonconforming uses existing at the time a zoning ordinance is adopted: "The lawful use of land or a structure exactly as the land or structure existed at the time of the enactment of the ordinance affecting the land or structure, may be continued . . . although that use or structure does not conform with the ordinance." The PRZO conforms to the foregoing statute by providing that "[i]t is the intent of this Ordinance to permit legal nonconforming lots, structures, or uses to continue until they are removed." The PRZO provides that where a nonconforming structure or a combination of a structure and land is superseded by a permitted use, the property must thereafter conform to the ordinance and may not revert back to a nonconformity: "Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district in which such structure is located, *and the nonconforming use may not thereafter be resumed*." PRZO, § 26-13.2(5)(c). One of the goals of local zoning is the gradual elimination of nonconforming uses. *Century Cellunet of Southern Michigan Cellular Ltd Partnership v Summit Twp*, 250 Mich App 543, 546; 655 NW2d 245 (2002).

Plaintiff has failed to show factually or legally that the use of the Ferndale parking transformed the nonconforming use of the office building property to a conforming use under plaintiff's zoning ordinance. Plaintiff has presented no convincing, specific evidence that the status of the property under the zoning ordinance changed from nonconforming to conforming. In the absence of dates and details concerning when the property became nonconforming, when the nonconforming use was superseded by a permitted use, and the supporting transactions, i.e., whether zoning was at issue, plaintiff has failed to establish a legal connection between the

[5] MCL 125.583a has been repealed, but the repeal does not affect this case. 2006 PA 110.

parcels for purposes of zoning. Plaintiff relies on the 1991 letter from Huntington Banks in which a senior vice president assured plaintiff that the two parcels were being offered for sale as a "package deal." The letter's statement that "[w]e recognize, as you have, that the value of the Pleasant Ridge building is contingent upon adequate off-street parking available which is provided by the Ferndale lot," does not reference zoning issues or requirements. Under the circumstances, we find no error in the court's conclusion that the office building was a legal nonconforming use under the PRZO.

V

Lastly, plaintiff argues that "restricting," i.e., changing, the use of the Ferndale parcel from parking to another use, unlawfully reduces the required level of parking for the Pleasant Ridge parcel in violation of the PRZO, and that the trial court erroneously concluded otherwise. Again, we disagree.

Section 26-13.3(7) of the PRZO provides: "Any area once designated as required off-street parking shall never be changed to any other use unless, and until, equal facilities are provided elsewhere." As set forth above, "[t]he rules of statutory construction apply to ordinances." *Kircher v Ypsilanti*, 269 Mich App 224, 228; 712 NW2d 738 (2005).

As discussed above, we cannot conclude that the Ferndale parcel was "designated as required off-street parking" under the PRZO. Accordingly, changing the use of the Ferndale parcel did not violate § 26-13.3(7) of the PRZO, and did not unlawfully reduce the required parking in violation of the PRZO.

Affirmed.

/s/ Jessica R. Cooper
/s/ Janet T. Neff
/s/ Stephen L. Borrello